

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

HARVEY VANCELEAVE,

PLAINTIFF

V.

NO. 4:07CV188-P-B

STATE OF MISSISSIPPI,

DEFENDANT

MEMORANDUM OPINION

This cause comes before the court for consideration of Mr. Vancleave's complaint filed pursuant to 42 U.S.C. § 1983. In his complaint, Mr. Vancleave is complaining of the constitutionality of a conviction for burglary. Plaintiff states that he was placed on parole for five years. After serving three years of parole, the remainder of his sentence was recently suspended. Plaintiff contends that his conviction was unconstitutional because he did not have "proper counsel." Mr. Vancleave concludes his complaint by asking to have his right to possess a firearm restored so that he may hunt. Despite his characterization of his complaint, the relief sought by Mr. Vancleave is clearly of a habeas nature. After carefully considering the contents of the *pro se* petition and giving it the liberal construction required by *Haines v. Kerner*, 404 U.S. 519 (1972), this court has come to the following conclusion.

It is well-settled that a state prisoner seeking habeas corpus relief in federal court is first required to exhaust his available state remedies. 28 U.S.C. § 2254(b)(1) and (c)¹; *see also*, *Rose v.*

¹ 28 U.S.C. §2254 (b)(1) and (c) provide:

- (b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that-
 - (A) the applicant has exhausted the remedies available in the courts of the State; or
 - (B)(i) there is an absence of available State corrective process; or
 - (ii) circumstances exist that render such process ineffective to protect the rights of the applicant.
- (c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

Lundy, 455 U.S. 509 (1982). More specifically, a petitioner must present his claims to the state courts in such a fashion as to afford those courts a fair opportunity to rule on the merits. *Picard v. Conner*, 404 U.S. 270 (1971); *Dispensa v. Lynaugh*, 847 F.2d 211, 217 (5th Cir. 1988). A habeas corpus petitioner must provide the state's highest court with a fair opportunity to pass upon the issues raised in the petition for federal habeas corpus relief. *Dupuy v. Butler*, 837 F.2d 699, 702 (5th Cir. 1988) (citing *Carter v. Estelle*, 677 F.2d 427, 443-44 (5th Cir. 1982)).

Petitioner's claim has not been presented to the State's highest court. Therefore, he has not exhausted his available state remedies. *See* Miss. Code Ann. §§ 99-39-1 *et seq.* Consequently, his petition to this court is premature and must be dismissed.

A final judgment in accordance with this opinion will be entered.

THIS the 14th day of December, 2007.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE